Fourth Review Conference
of the Parties to the Treaty
on the Non-Proliferation of Nuclear Weapons

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MEMORANDUM FROM THE GENERAL SECRETARIAT OF THE AGENCY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA AND THE CARIBBEAN PREPARED FOR THE FOURTH REVIEW CONFERENCE OF THE PARTIES TO THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

1. The Treaty for the Prohibition of Nuclear Weapons in Latin America, known as the "Treaty of Tlatelolco", was the first agreement to establish a nuclear-weapon-free zone in a large and densely populated area of the planet. The Treaty was the culmination of a process engaged in by the Governments of the Latin American countries in exercise of their sovereignty; it was opened for signature on 14 February 1967 and entered into force on 25 April 1969, when 11 ratifications had been received.

2. Both the Treaty on the Non-Proliferation of Nuclear Weapons and the Treaty of Tlatelolco have a common objective: to prevent the catastrophe of a nuclear war. The two mutually reinforce one another and constitute a valuable contribution to the political philosophy of peace and to international law in the field of disarmament. Indeed, regional security cannot be a concept which is dissociated from and independent of overall international security.

3. The Treaty of Tlatelolco, which predates the Treaty on the Non-Proliferation of Nuclear Weapons, is an instrument in force in accordance with the provisions of article VII of the non-proliferation Treaty, which states that "Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories". It should be recalled that this article was included at the proposal of the States Parties to the Treaty of Tlatelolco.

4. In its preamble, the Treaty of Tlatelolco expresses the desire of the Latin American States to end the armaments race, especially in the field of nuclear weapons, and strengthen a world at peace, based on the sovereign equality of States, mutual respect and good-neighbourliness.

5. On the basis of the considerations set forth in the preamble to the Treaty, the signatory States agreed, by a sovereign decision, to establish a régime for the prohibition of nuclear weapons in Latin America which, in addition to promoting the non-proliferation of nuclear weapons, requires the nuclear Powers to respect the statute of denuclearization of Latin America and the Caribbean in respect of warlike purposes.

6. The Treaty of Tlatelolco establishes the principle of the military denuclearization of Latin America and the Caribbean and defines its zone of application (article 4); it lays down the procedures for signature, ratification and entry into force (articles 25, 26 and 28); it imposes the obligation to use exclusively for peaceful purposes the nuclear material and facilities which are under the jurisdiction of the Contracting Parties and prohibits the testing, use, manufacture, production, possession or control of any nuclear weapon or participation in any way in such activities (article 1); it defines nuclear weapons (article 5); sets up an Agency and its constituent organs (OPANAL) (articles 7 to 11); establishes a control system (articles 12 to 18 and article 23); regulates the relations of OPANAL with other international organizations (articles 19 and 21): prohibits reservations to the Treaty (article 27); sets forth measures to be taken in the event of violation of the Treaty (article 20); outlines provisions governing the settlement of disputes (article 24); lays down the privileges and immunities which OPANAL should enjoy in the territories of the Contracting Parties (article 22); sets forth the procedure for amending the Treaty (article 29) and the conditions for its denunciation (article 30). It also provides for two additional protocols.

7. Additional Protocol I to the Treaty of Tlatelolco imposes on the extracontinental States which have, de jure or de facto, territory under their control in the zone the obligation to respect the statute of denuclearization in respect of warlike purposes as defined in articles 1, 3, 5 and 13 of the Treaty. Additional Protocol II requires the five nuclear Powers to respect the denuclearized zone established by the Treaty in all its express aims and provisions and to refrain from using or threatening to use nuclear weapons against the Contracting Parties. Both Protocols establish that their duration shall be the same as that of the Treaty. Additional Protocol II is not subject to reservations (see table, annex B).

8. On 5 December 1967, the General Assembly in resolution 2286 (XXII) welcomed with satisfaction "the Treaty for the Prohibition of Nuclear Weapons in Latin America, which constitutes an event of historic significance in the efforts to prevent the proliferation of nuclear weapons and to promote international peace and security and which at the same time establishes the right of Latin American countries to use nuclear energy for demonstrated peaceful purposes in order to accelerate the economic and social development of their peoples". By the end of 1967, the year in which the Treaty was opened for signature, it had already been signed by 21 States, including the two States in the region which are more advanced in the nuclear field: Argentina and Brazil. The present status of signatures, ratifications and exemptions from article 28 is set forth in the table in annex A.

9. On 1 July 1968, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was opened for signature, and on 5 March 1970 it entered into force. The application of some provisions established already in the Treaty of Tlatelolco differs from the application of similar provisions of the NPT, for example, article 13 of the former and article III of the latter with respect to the safeguards agreements to be negotiated with the International Atomic Energy Agency (IAEA). For this reason, a number of relevant observations should be made.

10. The function of IAEA within the control system provided for under article 13 of the Treaty of Tlatelolco is set forth in articles 13, 14, 16 and 18 of that Treaty. Article 13 of the Treaty provides that each Contracting Party shall negotiate multilateral or bilateral agreements with IAEA for the application of the Agency's safeguards to its nuclear activities. States which have ratified Additional Protocol I of the Treaty are also bound, under article 1 of the Protocol, to negotiate the agreements referred to in article 13 in order to ensure that they may be applied in territories for which, de jure or de facto, they are internationally responsible and which lie within the limits of the geographical zone established in that Treaty.

11. In 1961, IAEA set out to establish a system of safeguards to be applied to projects carried out with the assistance of the Agency and to bilateral or multilateral agreements concerning the supply or unilateral delivery of nuclear facilities, equipment or technology reported to IAEA under the safeguards agreement in question. These agreements were elaborated in accordance with the guidelines set forth in document INFCIRC/66 and its subsequent revisions. This model continues to be used as the basis for negotiating safeguards agreements with States which are not parties to the Treaty of Tlatelolco or the NPT and which have not requested comprehensive safeguards agreements.

12. The first safeguards agreement based on the Treaty of Tlatelolco was concluded with Mexico in 1968. Its purpose was to verify that Mexico was abiding by its commitment that no nuclear material, equipment or facility to be reported to IAEA would be used for military purposes. The overall format and the commitment were based on the model set forth in document INFCIRC/66/Rev.2. In 1973, after Mexico became a party to the NPT, a new safeguards agreement was concluded replacing the previous one, and based on the Treaty of Tlatelolco and on the NPT. The overall format of and the commitment in this joint agreement was based on the document INFCIRC/153 ("the Structure and Content of Agreements between the Agency and States Required in connection with the Treaty on the Non-Proliferation of Nuclear Weapons") with modifications which included: a change in the title, references to the Treaty of Tlatelolco in the preamble, deletion of the reference to the NPT in the basic commitment, and an amendment to the duration clause in order to include a reference to the Treaty of Tlatelolco.

13. To date, the IAEA Board of Governors has approved 20 such safeguards agreements, including two concluded in accordance with Additional Protocol I to the Treaty. Two other safeguards agreements (Panama and Colombia) were concluded on the basis of document INFCIRC/153 with some additional changes and were based only on the Treaty of Tlatelolco. The changes do not contain any provision corresponding to paragraph 14 of document INFCIRC/153, specifically the provision referring to the withdrawal of nuclear material used for a non-proscribed military purpose, for example, a purpose other than explosions, since the Parties to the Treaty of Tlatelolco have undertaken to use nuclear material and facilities exclusively for peaceful purposes. Furthermore, a new article was inserted and another was deleted, both concerning the transfer of nuclear material outside the country, because the Treaty of Tlatelolco does not contain any provision corresponding to article III, paragraph 2, of the NPT on nuclear explosions. Such transfers are possible under the safeguards agreement only if the nuclear material

is subject to safeguards in the receiving State. The comprehensive safeguards agreements negotiated to date under article 13 prohibit the use of nuclear material for the manufacture of any nuclear explosive device. (See table in annex C.)

14. Both Argentina and Chile, which are not parties to either the Treaty of Tlatelolco or the NPT, have objected to the standard agreements negotiated up to now because they are geared specifically to the NPT, not the Treaty of Tlatelolco. It should also be noted that Argentina signed the Treaty of Tlatelolco, but has not ratified it and that Chile signed and ratified that Treaty but has not granted the waiver referred to in article 28, paragraph 2, of the Treaty.

15. At the 30th regular meeting of the IAEA General Conference, the General Secretary of OPANAL, owing to the special circumstance of the development of the Argentine nuclear programme, supported the wish of those countries for the negotiation of a safeguards agreement specifically geared to the letter and spirit of the Treaty of Tlatelolco. For that purpose, OPANAL called for a workshop-seminar to discuss the difficulties which have prevented the countries which are not parties to the NPT from concluding safeguards agreements in accordance with article 13 of the Treaty of Tlatelolco. It has still not been possible, as yet, to hold this seminar. It is worth mentioning that the Brazilian delegation to the eleventh regular session of the General Conference of OPANAL stated that "article 13 defines an obligation which will apply to Brazil only when the country becomes a Contracting Party to the Treaty".

16. OPANAL attended the Second Review Conference of the non-proliferation Treaty in 1980 in accordance with a mandate from the General Conference [resolution 131 (VI)], which, considering the obvious need for the Latin American countries to co-ordinate their action with respect to the Review Conference, decided to recommend to the States Parties to the Treaty of Tlatelolco that they should co-ordinate, by such ways and means as they deem appropriate, the positions which they would adopt at the Second Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons and requested the General Secretary to afford all necessary co-operation in co-ordinating the criteria. The criteria included promoting the establishment of more nuclear-weapon-free zones and ensuring adequate bilateral, regional and global technical co-operation in order to strengthen regional and international security. OPANAL attended the Third Review Conference of the non-proliferation Treaty with the same objectives in mind.

17. The Treaty for the Prohibition of Nuclear Weapons in Latin America conditionally permits nuclear explosions for peaceful purposes. Article 18 provides that the Contracting Parties may carry out nuclear explosions for peaceful purposes, including explosions involving devices similar to those used in nuclear weapons, or collaborate with third parties for the same purpose, provided that they do so in accordance with the provisions of article 18 and the other articles of the Treaty, particularly articles 1 and 5.

18. In 1987, at its tenth regular session, the General Conference of OPANAL, in resolution 239 (X), reaffirmed the spirit and letter of the provisions contained in article 18 of the Treaty of Tlatelolco; at the same time, it stressed that this reaffirmation was "on the understanding that exercise of this right would not call into question existing levels of security in the region".

19. We are firmly convinced that the nuclear-weapon-free zone of Latin America and the Caribbean will never achieve the effectiveness sought by the Treaty of Tlatelolco unless it covers all territories and maritime areas delimited in article 4 of that Treaty.

20. We also believe that there are gaps in the non-proliferation régime and that these gaps must be filled if we truly want to avert proliferation. We believe that the Fourth Review Conference of the non-proliferation Treaty must be the occasion for a frank exchange of views and a realistic sense of the danger inherent in violation of the régime. To that end, OPANAL wishes to co-operate by frankly expressing views which may be of use in further improving the NPT.

21. Resolution 2028 (XX), which was adopted on 19 November 1965 by the United Nations General Assembly, by 93 votes to none, with 5 abstentions, contains a set of principles which were to form the basis of the Treaty on the Non-Proliferation of Nuclear Weapons:

> "(a) The treaty should be void of any loop-holes which might permit nuclear or non-nuclear Powers to proliferate, directly or indirectly, nuclear weapons in any form;
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> "(b) The treaty should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers;
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> "(c) The treaty should be a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament;
>
> "(d) There should be acceptable and workable provisions to ensure the effectiveness of the treaty;
>
> "(e) Nothing in the treaty should adversely affect the right of any group of States to conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories."

22. The Treaty was preceded by a first draft non-proliferation treaty prepared by the United States of America and submitted to the Eighteen-Nation Committee on Disarmament in Geneva and the draft which the Soviet Union submitted directly to the General Assembly at its twentieth session.

23. The purpose of the aforesaid set of principles submitted by Burma, Brazil, Ethiopia, India, Mexico, Nigeria, Sweden and the United Arab Republic, the eight non-aligned countries participating in the Eight en-Nation Committee on Disarmament, was to ensure that discussions did not focus on the two drafts which had been submitted but that there should be room in the negotiations for the views of the non-aligned countries. Following nearly two years of negotiations, the NPT was opened for signature on 1 July 1968; only principle (e) relating to nuclear-weapon-free areas became one of the articles of the Treaty; the four other principles did not fare as well and when Romania and the United Arab Republic proposed that the Preamble to the Treaty should make a specific reference to resolution 2028 (XX), their proposal was rejected by the drafters of the final text.

24. Articles I and II of the NPT set forth the commitments of nuclear-weapon and non-nuclear-weapon States, and that is where principle (a) would have been involved. The gaps in those articles are: (i) a nuclear-weapon State can help another nuclear-weapon State manufacture nuclear weapons in order to strengthen its arsenal; and (ii) a non-nuclear-weapon State can co-operate at the technological level to enhance the nuclear capacity of the nuclear-weapon State concerned. In both cases this leads to vertical proliferation. Nor does it cover the commitment of nuclear-weapon States not to station nuclear weapons in the territory of a non-nuclear-weapon State or in areas that may threaten the interests of non-nuclear-weapon States. With regard to principle (b), military facilities that produce nuclear weapons and invoke military secrecy cannot be inspected by IAEA; thus there are fewer safeguards in respect of nuclear-weapon States and more in respect of non-nuclear-weapon States. With respect to the utilization of nuclear energy for peaceful purposes, the guidelines imposed by the States possessing nuclear technology and material force those which do not possess it to obtain it by their own efforts which, in effect, leads to proliferation. It is clear that this has weakened principle (c).

25. With regard to principle (d), as reflected in the evaluation of the Review Conferences of the non-proliferation Treaty, the Treaty has not really lived up to the noble aims which led non-nuclear-weapon States to ratify it.

26. At its eleventh regular session held in Mexico City, the General Conference urged all Latin American and Caribbean States which were not yet party to the régime established by the Treaty of Tlatelolco to become parties to it and instructed the Good Offices Commission to embark, as a matter of priority, on consideration of means to enable all States of the region to become party to the régime. The fact that the zone of application of the Treaty of Tlatelolco, which is defined in article 4, paragraph 2, has not yet been fully established shows that the task which the drafters of the Treaty set themselves remains unfinished. What is more, problems of interpretation have arisen concerning the scope of article 18, the drafting of the Safeguards Agreements, protection of industrial secrets, the scope of the special inspections referred to in article 16 and even the interpretative declarations made by certain nuclear Powers. Notwithstanding the above, the Member States and the General Secretary remain committed to ensuring that the nuclear-weapon-free zone in Latin America and the Caribbean becomes a reality as a first step towards bringing the programmes of nuclear co-operation within the spirit set forth in the Preamble to the Treaty, namely, that Latin America, faithful to its tradition of universality, must not only endeavour to banish from its homelands the scourge of a nuclear war, but must also strive to promote the well-being and advancement of its peoples, while at the same time co-operating in the fulfilment of the ideals of mankind.

Annex I

STATUS OF THE TREATY OF TLATELOLCO

Country	Signature	Ratification	Waiver
Antigua and Barbuda	11 October 1983	11 October 1983	11 October 1983
Argentina	27 September 1967		
Bahamas	29 November 1976	26 April 1977	26 April 1977
Barbados	18 October 1968	25 April 1969	25 April 1969
Belize*			
Bolivia	14 February 1967	18 February 1969	18 February 1969
Brazil	9 May 1967	29 January 1968	
Colombia	14 February 1967	4 August 1972	6 September 1972
Costa Rica	14 February 1967	25 August 1969	25 August 1969
Chile	14 February 1967	9 October 1974	
Cuba			
Dominica	2 May 1989		
Dominican Republic	28 July 1967	14 June 1968	14 June 1968
Ecuador	14 February 1967	11 February 1969	11 February 1969
El Salvador	14 February 1967	22 April 1968	22 April 1968
Grenada	29 April 1975	20 June 1975	20 June 1975
Guatemala	14 February 1967	6 February 1970	6 February 1970
Guyana*			
Haiti	14 February 1967	23 May 1969	23 May 1969
Honduras	14 February 1967	23 September 1968	23 September 1968
Jamaica	26 October 1967	26 June 1969	26 June 1969
Mexico	14 February 1967	20 September 1967	20 September 1967
Nicaragua	15 February 1967	24 October 1968	24 October 1968
Panama	14 February 1967	11 June 1971	11 June 1971
Paraguay	26 April 1967	19 March 1969	19 March 1969
Peru	14 February 1967	4 March 1969	4 March 1969
Saint Christopher and Nevis			
Saint Lucia			
Saint Vincent and the Grenadines			
Suriname	13 February 1976	10 June 1977	10 June 1977
Trinidad and Tobago	27 June 1967	3 December 1970	27 June 1975
Uruguay	14 February 1967	20 August 1968	20 August 1968
Venezuela	14 February 1967	23 March 1970	23 March 1970

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* Art. 25, para. 2.

Annex II

STATUS OF THE ADDITIONAL PROTOCOLS TO THE TREATY OF TLATELOLCO

ADDITIONAL PROTOCOL I

Country	Signature	Ratification
France	2 March 1979	
Netherlands	15 March 1968	26 July 1971
United Kingdom	20 December 1967	11 December 1969
United States of America	26 May 1977	23 November 1981

ADDITIONAL PROTOCOL II

China	21 August 1973	12 June 1974
France	18 July 1973	22 March 1974
USSR	18 May 1978	8 January 1979
United Kingdom	20 December 1967	11 December 1969
United States of America	1 April 1968	12 May 1971

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Annex III

COMPLIANCE WITH ARTICLE 13 OF THE TREATY OF TLATELOLCO

Country	Negotiation	Concluded
Antigua and Barbuda	July 1986	
Bahamas	September 1978	
Barbados	October 1979	
Bolivia a/	June 1973	23 August 1974
Colombia b/	February 1978	22 December 1982
Costa Rica a/	September 1972	22 November 1979
Dominican Republic a/	February 1978	11 October 1978
Ecuador a/	June 1973	10 March 1975
El Salvador a/	May 1974	22 April 1975
Grenada	August 1975	
Guatemala a/	June 1977	10 February 1982
Haiti a/	June 1973	6 January 1975
Honduras a/	May 1974	18 April 1975
Jamaica a/	February 1978	6 November 1978
Mexico a/*		6 September 1968
Nicaragua a/	September 1973	29 December 1976
Panama b/	June 1973	23 March 1984
Paraguay a/	January 1978	20 March 1979
Peru a/	February 1978	10 August 1979
Suriname a/	March 1978	2 February 1979
Trinidad and Tobago		
Uruguay a/		17 September 1976
Venezuela a/		11 March 1982
United States of America**		17 February 1989
United Kingdom**	April 1989	
Netherlands (Netherlands Antilles)**		5 April 1973

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* On 14 April 1973 the Government of Mexico signed a new agreement replacing that of 6 September 1968.

** Agreement concluded on the basis of article 1 of Additional Protocol I.

a/ The Safeguards Agreement refers to the NPT and to the Treaty of Tlatelolco.

b/ The Safeguards Agreement refers to the Treaty of Tlatelolco.

Annex IV

The General Secretary of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, bearing in mind the comments made by some delegations at the meetings of the Preparatory Committee for the Fourth Review Conference of the NPT, takes the opportunity of emphasizing that:

1. The Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean and the General Secretary do not recognize the existence of any mandate of the Conference of the non-proliferation Treaty that in any way reflects a subordination of the Treaty of Tlatelolco to the non-proliferation Treaty; hence, given that the Agency's Council unanimously approved the memorandum submitted by OPANAL, the latter must contain, expressly and exclusively, the views shared by the States making up the Council of OPANAL (Colombia, Jamaica, Mexico, Peru and Venezuela) and the General Secretary of the Agency.

2. Paragraph 24 of the OPANAL memorandum recognizes that the fact that the zone of application of the Treaty of Tlatelolco, which is defined in article 4, paragraph 2, has not yet been fully established shows that the task which the drafters of the Treaty set themselves remains unfinished. What is more, it acknowledges that problems of interpretation have arisen concerning the scope of article 18, the wording of the Safeguards Agreements, protection of industrial secrets, the scope of the special inspections referred to in article 16 and even the declarations of interpretation made by certain nuclear Powers.

3. While we recognize that there are some disputed points with regard to the Treaty of Tlatelolco, that does not mean that we are not fully convinced of its benefits. We have expressed our readiness to study and negotiate on all possible ways of overcoming any difficulty that might interfere with the establishment of the zone defined in article 4, paragraph 2, of the Treaty, and of giving effect to its spirit and purposes.

4. The viewpoint expressed in the OPANAL document with regard to the NPT is in no way intended to set up antagonisms between the Treaty of Tlatelolco and the non-proliferation Treaty. We are simply adding our view to that of others to the effect that the NPT could be improved.

5. Obviously, our document contains certain criticisms of the NPT; nevertheless, the intent in making them is a purely constructive one.